



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation on June 17, 2004

NOTICE OF ACTION TAKEN -- DOCKETS OST-2000-6726 & OST-2000-6728

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Applicant: Aer Lingus Limited

Date Filed: October 28, 2003

Relief requested: (1) renew statement of authorization under 14 CFR 212 of the Department's regulations to place the designator code of American Airlines, Inc. on Aer Lingus flights between Baltimore, Maryland, New York, New York, Boston, Massachusetts, Chicago, Illinois, and Los Angeles, California, on the one hand, and Shannon/Dublin, Ireland, on the other hand, and

(2) renew exemption from 49 U.S.C. § 41301 to conduct scheduled foreign air transportation of persons, property and mail between Baltimore, Maryland, on the one hand, and Shannon/Dublin, Ireland, on the other hand. Aer Lingus requests that we renew the authorities for an indefinite period.

If renewal, date and citation of last action: November 14, 2002, and January 3, 2003 (adding Baltimore-Shannon/Dublin), in these dockets

Applicant representative: Charles A. Hunnicutt and G. Brent Connor 202-775-0725

DOT analyst: Shelita Smith 202-366-1226

Responsive pleadings: The State of Maryland, United Air Lines, Inc. (United) and British Midland Airways Limited (bmi) filed answers in response to Aer Lingus' renewal application. The State of Maryland supports Aer Lingus' requests. In their joint answer, United/bmi state that the Department granted bmi a statement of authorization to conduct extrabilateral codeshare services for United between London and Dublin and limited the term of that authority to one year (see Notice dated May 12, 2003, in Docket OST-2001-9830). For that reason, United/bmi state that we should not grant Aer Lingus' request to renew its extrabilateral statement of authorization for the indefinite term requested unless the Department sua sponte acts to grant bmi's statement of authorization to code-share with United for an indefinite term. No further comments were filed in either docket.

DISPOSITION

Action: Approved in part, remainder dismissed ¹

Action date: June 17, 2004

Effective dates of exemption authority and statement of authorization granted: June 17, 2004 – June 17, 2005

Basis for approval (bilateral agreement/reciprocity): We find that the public interest bases upon which we relied in our initial grant of authority in Order 2000-6-12 remain valid and support our action here.

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated:

X Standard exemption conditions (attached) X Aer Lingus' foreign air carrier permit conditions (Order 91-5-28)

X Code-share conditions previously imposed on Aer Lingus and American in Dockets OST-2000-6726 and OST-2000-6728.

Action taken by: Paul L. Gretch, Director
Office of International Aviation

We found that the applicant was qualified to perform its proposed operations.

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) our action was consistent with Department policy; (2) grant of the authority was consistent with the public interest; and (3) grant of the authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975. To the

¹ We dismissed that portion of Aer Lingus' requests to conduct these services beyond June 17, 2005, without prejudice to refilling at a later date.

extent not granted/deferred/dismissed, we denied all requests in the referenced Docket. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR §385.30, may file their petitions within seven (7) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

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http://dms.dot.gov/reports/reports_aviation.asp

Foreign Carrier Exemption Conditions

In the conduct of the operations authorized, the foreign carrier applicant(s) shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- (2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, 14 CFR Parts 129, 91, and 36, and with all applicable U.S. Government requirements concerning security, including, but not limited to, 49 CFR Part 1546 or 1550, as applicable. To assure compliance with all applicable U.S. Government requirements concerning security, the holder shall, before commencing any new service (including charter flights) from a foreign airport that would be the holder's last point of departure for the United States, contact its International Principal Security Inspector (IPSI) to advise the IPSI of its plans and to find out whether the Transportation Security Administration has determined that security is adequate to allow such airport(s) to be served;
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are: (a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or (b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States. In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;
- (8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;
- (9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;
- (10) If charter operations are authorized, except as otherwise provided in the applicable aviation agreement, comply with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and
- (11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code.